

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TARZ MITCHELL,
#63139

Plaintiff,

vs.

HOWARD SKOLNIK, *et al.*,

Defendants.

2:10-cv-01339-JCM-GWF

ORDER

Presently before the court is *pro se* plaintiff Tarz Mitchell's fourth motion for preliminary injunction. (Doc. #49). Also before the court is plaintiff's motion for teleconference in support of the motion for preliminary injunction. (Doc. #50). Defendants Howard Skolnik did not file a response to these motions.

Background

Plaintiff is a prisoner held by the Nevada Department of Corrections ("NDOC") at Southern Desert Correctional Center ("SDDC"). (Doc. #1, Ex. A). On May 4, 2012, the court granted plaintiff's motion for leave to amend the complaint to assert a claim for continued retaliation by defendants for filing this lawsuit. (Doc. #41). Plaintiff now requests a preliminary injunction, asserting that defendants "have conspired with their subordinates to physically abuse, threaten and harass [p]laintiff" because he

1 filed grievances and this civil lawsuit. (Doc. #49). Thus, plaintiff requests a preliminary injunction
 2 giving plaintiff the following relief:

- 3 “(1) Because of the on-going violation of retaliation against plaintiff, plaintiff to be
 4 transferred to a medium security institution in the Nevada Department of
 Corrections, and same custody level.
- 5 (2) While plaintiff is housed at Southern Desert Correctional Center, there is to be
 6 no more retaliatory conduct from Southern Desert Correctional Center Officials
 against plaintiff for redress of prison grievances.
- 7 (3) When or if plaintiff is placed in administrative segregation, plaintiff will be able
 8 to have access to the court, by law clerk or, law library supervisor to pick up legal
 mail and legal supplies.”

9 (Doc. #49).

10 Plaintiff’s previous motions for preliminary injunction were denied by this court. (*See* Docs. #14
 11 and #34).¹ The court found that plaintiff had failed to establish that the *Winter v. Natural Resources*
 12 *Defense Council, Inc.*, 555 U.S. 7, 20 (2008), factors weighed in favor of granting a preliminary
 13 injunction. (*See* Docs. #14 and #34).

14 Legal Standard

15 The Prison Litigation Reform Act (“PLRA”) allows the court to grant preliminary injunctive
 16 relief with respect to prison conditions. 18 U.S.C. § 3626(a)(2). When preliminary injunctive relief is
 17 requested with respect to prison conditions, “[t]he court shall give substantial weight to any adverse
 18 impact on public safety or the operation of the criminal justice system caused by the preliminary relief
 19” *Id.* Therefore, when balancing hardships, the court must be particularly concerned with the
 20 hardship caused by judicial interference in the operation of a prison. *See id.* If a preliminary injunction
 21 is granted, it “must be narrowly drawn, extend no further than necessary to correct the harm the court
 22 finds required preliminary relief, and be the least intrusive means necessary to correct that harm.” *Id.*

23 Pursuant to Federal Rule of Civil Procedure 65, a court may issue a preliminary injunction only
 24 on notice to the other party. Federal courts must consider the following factors in determining whether

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 26 ¹ Plaintiff’s second motion for preliminary injunction was withdrawn by stipulation of the parties.
 (Doc. #28).

1 to issue a preliminary injunction: (1) a likelihood of success on the merits; (2) the likelihood of
2 irreparable injury if preliminary relief is not granted; (3) balance of hardships; and (4) advancement of
3 the public interest. *Winter*, 555 U.S. at 20.

4 Discussion

5 Similar to the previous motions for preliminary injunction, the instant motion for preliminary
6 injunction fails because plaintiff has not adequately analyzed the *Winter* factors. The motion for
7 preliminary injunction only engages in a conclusory analysis of the likelihood of success and irreparable
8 injury factors, and does not address the balance of hardships or advancement of the public interest
9 factors in any manner. (*See* Doc. #49).

10 Further, pursuant to the PLRA, this court is required to give “substantial weight to any adverse
11 impact on public safety or the operation of a criminal justice system caused by the preliminary relief .
12 . . .” 18 U.S.C. § 3626(a)(2). The instant motion for preliminary injunction does not attempt to make
13 any showing that the requested relief will not have an adverse impact on public safety or the operation
14 of the criminal justice system. *Id.* Therefore, the court is unable to determine whether the balance of
15 hardships and public interest factors weigh in favor of granting the motion for preliminary injunction.

16 Finally, plaintiff previously has been warned that inmates do not have an “abstract, freestanding
17 right to a law library or legal assistance.” (Doc. #40, quoting *Lewis v. Casey*, 518 U.S. 343, 351 (1996)).
18 The court denied plaintiff’s previous motion for telephonic conference because plaintiff’s problems with
19 access to the law library “appear to be the product of ‘prison regulations which are reasonably related
20 to legitimate penological interests.’” (Doc. #40, quoting *Lewis*, 518 U.S. at 351).

21 Accordingly,

22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that *pro se* plaintiff Tarz Mitchell’s
23 fourth motion for preliminary injunction (doc. #49) be, and the same hereby is, DENIED.

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1 IT IS FURTHER ORDERED that plaintiff's motion for teleconference in support of the motion
2 for preliminary injunction (doc. #50) be, and the same hereby is, DENIED.

3 DATED June 28, 2012.

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6 UNITED STATES DISTRICT JUDGE
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